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Counsel for Highland Capital Management, L.P.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹	§	
	§	Case No. 19-34054-sgj11
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	21-03000-sgj
	§	
HIGHLAND CAPITAL MANAGEMENT FUND	§	
ADVISORS, L.P., NEXPOINT ADVISORS, L.P.,	§	
HIGHLAND INCOME FUND, NEXPOINT	§	

¹ The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

STRATEGIC OPPORTUNITIES FUND,
NEXPOINT CAPITAL, INC., AND CLO
HOLDCO, LTD.,

Defendants.

**PLAINTIFF’S EMERGENCY MOTION FOR A TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION
AGAINST CERTAIN ENTITIES OWNED AND/OR CONTROLLED BY
MR. JAMES DONDERO**

Highland Capital Management, L.P., the plaintiff in the above-captioned adversary proceeding (the “Adversary Proceeding”) and the debtor and debtor-in-possession (the “Debtor” or “Highland”) in the above-captioned chapter 11 case (“Bankruptcy Case”), by and through its undersigned counsel, files this emergency motion (the “Motion”) seeking entry of a temporary restraining order and a preliminary injunction enjoining Highland Capital Management Fund Advisors, L.P. (“HCMFA”), NexPoint Advisors, L.P. (“NPA,” and together with HCMFA, the “Advisors”), Highland Income Fund, NexPoint Strategic Opportunities Fund, NexPoint Capital, Inc. (collectively, the “Funds”), and CLO Holdco, Ltd. (“CLO Holdco” and together with the Advisors and the Funds, the “Defendants”) from: (a) interfering with or otherwise impeding, directly or indirectly, the Debtor’s business, including but not limited to the Debtor’s (i) management of the CLOs,² (ii) decisions concerning the purchase or sale of any assets on behalf of the CLOs, or (iii) contractual right to serve as the portfolio manager (or other similar title) of the CLOs; (b) otherwise violating section 362(a) of the Bankruptcy Code; (c) seeking to terminate the portfolio management agreements and/or servicer agreements between the Debtor and the CLOs (collectively, (a)-(c) constitute the “Prohibited Conduct”); (d) conspiring, colluding, or collaborating with (x) Mr. Dondero, (y) any entity owned and/or controlled by Mr.

² Capitalized terms not otherwise defined in this Motion have the meanings ascribed to them in the Debtor’s *Memorandum of Law in Support of Its Motion for a Temporary Restraining Order and Preliminary Injunction against Certain Entities Owned and/or Controlled by Mr. James Dondero* filed contemporaneously with the Motion.

Dondero, and/or (z) any person or entity acting on behalf of Mr. Dondero or any entity owned and/or controlled by him, to, directly or indirectly, engage in any Prohibited Conduct; and (e) engaging in any Prohibited Conduct with respect to any of the Successor Parties. In support of the Motion, the Debtor respectfully states the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334(b). The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).
2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.
3. The predicates for the relief requested in the Motion are sections 105(a) and 362(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 7065 and 7001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

RELIEF REQUESTED

4. The Debtor requests that this Court issue the proposed form of restraining order attached as **Exhibit A** (the “Proposed Order”), pursuant to sections 105(a) and 362(a) of the Bankruptcy Code and Rules 7001 and 7065 of the Bankruptcy Rules.

5. For the reasons set forth more fully in the Debtor’s *Memorandum of Law in Support of Its Motion for a Temporary Restraining Order and Preliminary Injunction against Certain Entities Owned and/or Controlled by Mr. James Dondero* (the “Memorandum of Law”) filed contemporaneously with this Motion, the Debtor seeks injunctive relief enjoining Defendants from (i) interfering with or impeding the Debtor’s business, and (ii) seeking to terminate the Debtor’s management agreements with the CLOs. Absent injunctive relief, the Debtor will be unable to control the CLOs in the same manner it always had and will forced to manage the CLOs under a cloud of uncertainty created by the Defendants’ persistent implicit and

explicit threats. Emergency relief is needed to avoid this immediate and irreparable harm that will be caused to the Debtor.

6. In accordance with Rule 7007-1 of the *Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas* (the “Local Rules”), contemporaneously herewith and in support of this Motion, the Debtor is filing: (a) its Memorandum of Law, (b) the *Declaration of Mr. James P. Seery Jr. in Support of the Debtor’s Motion for a Temporary Restraining Order against Certain Entities Owned and/or Controlled by Mr. Dondero* (the “Seery Declaration”), and (c) the Debtor’s *Motion for Expedited Hearing on Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Certain Entities Owned and/or Controlled by Mr. James Dondero* (the “Motion to Expedite”).

7. Based on the facts set forth in the Seery Declaration and the exhibits annexed thereto, and the arguments contained in the Memorandum of Law, the Debtor is entitled to the relief requested herein as set forth in the Proposed Order.

8. Notice of this Motion has been provided to Defendants. The Debtor submits that no other or further notice need be provided.

WHEREFORE, the Debtor respectfully requests that the Court (i) enter the Proposed Order substantially in the form annexed hereto as **Exhibit A** granting the relief requested herein, and (ii) grant the Debtor such other and further relief as the Court may deem proper.

Dated: January 6, 2021.

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EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

VS.

HIGHLAND CAPITAL MANAGEMENT FUND
ADVISORS, L.P., NEXPOINT ADVISORS, L.P.,
HIGHLAND INCOME FUND, NEXPOINT
STRATEGIC OPPORTUNITIES FUND,
NEXPOINT CAPITAL, INC., AND CLO
HOLDCO, LTD,

Defendants.

§ Chapter 11
§ Case No. 19-34054-sgj11
§
§
§
§
§ Adversary Proceeding No.
§ 21-03000-sgj
§

¹ The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

**ORDER GRANTING DEBTOR'S MOTION FOR A TEMPORARY RESTRAINING
ORDER AGAINST CERTAIN ENTITIES OWNED AND/OR CONTROLLED BY MR.
JAMES DONDERO**

The parties subject to this Temporary Restraining Order are: (1) Highland Capital Management Fund Advisors, L.P., (2) NexPoint Advisors, L.P., (3) Highland Income Fund, (4) NexPoint Strategic Opportunities Fund, (5) NexPoint Capital, Inc., and (6) CLO Holdco, Ltd. (collectively, the “Defendants”).

Having considered (a) the *Debtor's Motion for a Temporary Restraining Order and Preliminary Injunction against Certain Entities Owned and/or Controlled by Mr. James Dondero* [Docket No. ____] (the “Motion”);² (b) the *Declaration of James P. Seery, Jr. in Support of the Debtor's Motion for a Temporary Restraining Order against Certain Entities Owned and/or Controlled by Mr. James Dondero* [Docket No. ____] (the “Seery Declaration”), and the exhibits annexed thereto; (c) the *Debtor's Memorandum of Law in Support of the Debtor's Motion for a Temporary Restraining Order against Certain Entities Owned and/or Controlled by Mr. James Dondero* [Docket No. ____]; (d) the allegations and relief sought in *Plaintiff Highland Capital Management, L.P.'s Verified Original Complaint for Declaratory and Injunctive Relief* [Docket No. 1]; and (e) all prior proceedings relating to this matter, including the Hearing on the Restriction Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Debtor's estate, its creditors, and other parties-in-interest; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.
2. The Defendants are temporarily enjoined and restrained from: (a) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's (i) management of the CLOs, (ii) decisions concerning the purchase or sale of any assets on behalf of the CLOs, or (iii) contractual rights to serve as the CLOs' portfolio manager (or other similar title); (b) otherwise violating section 362(a) of the Bankruptcy Code; (c) seeking to terminate the portfolio management agreements and/or servicing agreements between the Debtor and the CLOs (collectively, (a)-(c) constitute the "Prohibited Conduct");³ (d) conspiring, colluding, or collaborating with (x) Mr. Dondero, (y) any entity owned and/or controlled by Mr. Dondero, and/or (z) any person or entity acting on behalf of Mr. Dondero or any entity owned and/or controlled by him, to, directly or indirectly, engage in any Prohibited Conduct; and (e) engaging in any Prohibited Conduct with respect to any of the Successor Parties.
3. All objections to the Motion are overruled in their entirety.
4. The Defendants are directed to (a) provide a copy of this Order to each of their respective officers, directors, employees, and agents, and (b) file on the docket a sworn

³ For the avoidance of doubt, this Order does not enjoin or restrain the Defendants from seeking judicial relief upon proper notice or from objecting to any motion filed in the above-referenced bankruptcy case.

certification attesting to each Defendant's compliance with the foregoing direction (including the manner, date, and time of compliance) within twenty-four (24) hours of the Court's filing of this Order on the docket.

5. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER